IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2319 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITU @ JITENDRA GANDUBHAI KOLINR GONDBIYA HOSPITAL

Versus

STATE OF GUJARAT

Appearance:

MR PRAVIN GONDALIYA, amicus curiae for Petitioner

MR SJ DAVE, AGP for respondent-State2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/06/2000

ORAL JUDGEMENT

1. The detention order dated 25-1-2000, passed by the Police Commissioner, Rajkot, against the petitioner in exercise of powers conferred under Section 3 (1) of the Gujarat Prevention of Anti-social Activities Act, 1985, ("PASA" for short) is challenged in the present petition filed through jail.

2. The present petitioner-detenu has sent the present petition through jail authority and on receiving the same, office has registered the same as Special Civil Application No.2319 of 2000.

3. Thereafter, the matter came up before this Court for final hearing. On behalf of the State, learned AGP Mr. S.J.Dave is present, whereas Mr. Gondaliya appears as amicus curiae on behalf the petitioner-detenu.

4. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

5. I have heard Mr. Gondaliya, amicus curiae for the petitioner and also perused the material on record. According to learned advocate Mr. Gondaliya,the detenu has submitted a representation to the State authority which has neither been considered nor a copy of communication has been sent by the State authority to the detenu till date. As per the law laid down by this Court, this is a delay which has not been explained by the State. Even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat and ors. reported in 2000 (1) G.L.H. 393 as under :

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever on order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority. "

6. Since no affidavit has been filed either by the detaining authority or the State and the delay has not been sufficiently explained by the State, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

7. The petition is allowed. The impugned order of detention dated 25-1-2000 passed against the detenu is hereby quashed. The detenu- Jitu @ Jitendra Gandubhai Koli is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute with no order as to costs.

21-6-2000 (R.P.Dholakia, J.)

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